

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SMITHKLINE BEECHAM  
CORPORATION d/b/a  
GLAXOSMITHKLINE,

Plaintiff,

v.

BARR PHARMACEUTICALS, INC. and  
BARR LABORATORIES, INC.,

Defendants.

C.A. No. 08-CV-112 (SLR)

**JURY TRIAL DEMANDED**

**DEFENDANT BARR PHARMACEUTICALS, INC.'S  
MOTION TO DISMISS THE COMPLAINT AGAINST IT**

John C. Phillips, Jr. (#110)  
Brian E. Farnan (#4089)  
Phillips, Goldman & Spence, P.A.  
1200 North Broom Street  
Wilmington, DE 19806  
Tel. (302) 655-4200  
Fax (302) 655-4210  
[JCP@pgslaw.com](mailto:JCP@pgslaw.com)

Of Counsel:  
George C. Lombardi ([glombardi@winston.com](mailto:glombardi@winston.com))  
James M. Hilmert ([jhilmert@winston.com](mailto:jhilmert@winston.com))  
Ivan M. Poullaos ([ipoullaos@winston.com](mailto:ipoullaos@winston.com))  
WINSTON & STRAWN LLP  
35 West Wacker Drive  
Chicago, Illinois 60601-9703  
(312) 558-5600

*Attorneys for Defendants*

Defendant Barr Pharmaceuticals, Inc., pursuant to Federal Rule of Civil Procedure 12(b)(6), hereby moves this Court to dismiss the Complaint against it for failure to state a claim. In support of its motion, Barr Pharmaceuticals refers the Court to the brief in support of the motion and the following summary statements:

1. This is an ANDA patent infringement litigation. The only alleged act of patent “infringement,” pursuant to § 271(e)(2) of the Patent Act, is the artificial act of submitting an ANDA document to the FDA.
2. The only party who has submitted an ANDA document to the FDA, as stated on the face of Plaintiffs’ own Complaint, is Barr Laboratories, a co-defendant already named in this litigation.
3. The separate company Barr Pharmaceuticals, however, did not submit an ANDA. Barr Pharmaceuticals has not committed even the artificial act of infringement of an ANDA filing, and there is no other factual basis (and none alleged in the Complaint) to hold Barr Pharmaceuticals liable for patent infringement.

WHEREFORE, this Court should grant Barr Pharmaceuticals’ motion to dismiss the complaint against it, and grant other such relief that the Court deems just and proper.

Dated: March 17, 2008

Respectfully submitted,

By: /s/ John C. Phillips, Jr.  
John C. Phillips, Jr. (#110)  
Brian E. Farnan (#4089)  
Phillips, Goldman & Spence, P.A.  
1200 North Broom St.  
Wilmington, DE 19806  
Tele: (302) 655-4200  
Fax: (302) 655-4210  
JCP@pgslaw.com

Of Counsel:

George C. Lombardi  
(glombardi@winston.com)  
James M. Hilmert  
(jhilmert@winston.com)  
Ivan M. Poullaos  
(ipoullaos@winston.com)  
WINSTON & STRAWN LLP  
35 West Wacker Drive  
Chicago, Illinois 60601  
(312) 558-5600

*Attorneys for Defendant Barr Pharmaceuticals, Inc.*

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**JURY TRIAL DEMANDED**

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2008, upon  
consideration of Defendant Barr Pharmaceuticals, Inc.'s Motion to Dismiss the  
Complaint Against It (the "Defendant's Motion"), and any response thereto;

IT IS HEREBY ORDERED that Defendant's Motion is GRANTED.

IT IS HEREBY FURTHER ORDERED that Defendant Barr Pharmaceuticals,  
Inc. is hereby dismissed with prejudice from the above action.

\_\_\_\_\_  
The Honorable Sue L. Robinson